**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 1394/2005

RATHORE HOTEL TOUR PVT. LTD. & ORS.
v
GOVIND SINGH BAFNA & ORS.

Date of Judgment: 31st JANUARY, 2007

Hon'ble Mr. Justice R. S. Chauhan

Mr. J.K. Yogi for the appellants.
Mr. Ajeet Bhandari with
Mr. R.P. Singh for the respondents.

By Court:

The appellants-defendants have challenged the Order dated 31.3.05 passed by the Addl. District & Sessions Judge (Fast Track) No. 4, Jaipur City, Jaipur, whereby the learned Judge has dismissed their application under Order 9 Rule 13 of the Code of Civil Procedure (henceforth to be referred to as 'the Code' for short).

Briefly, the facts of the case are that the respondent No.1, Mr. Govind Singh Bafna had instituted a suit for recovery of Rs. 4,58,435/- against the appellants and against the proforma respondents. Vide order dated 28.1.02, the learned trial court ordered an ex-parte proceedings against the appellants and the other defendants. Subsequently, an advocate allegedly appeared for defendant No. 1,2 and 4 and filed his Vakalatnama on 20.4.02.

However, according to the appellants before this Court, the learned trial Judge was under a mis-impression that the advocate had, in fact, filed his Vakalatnama on behalf of all the defendants. Therefore, vide judgment dated 9.4.04, the learned Judge passed an ex-parte decree. According to the appellants-defendants Nos. 3,5 and 6, the present appellants before this Court, were not represented by the learned advocate. In fact, they came to know about the ex-parte judgment when the execution proceedings commenced in the Court at Alwar on 9.2.05. Immediately on 22.2.05 the appellants filed an application under Order 9 Rule 13 of the Code for setting aside the judgment and decree dated 9.4.04. After hearing the appellants and the plaintiff-respondents vide order dated 31.3.05, the learned Court dismissed the application under Order 9 Rule 13 of the Code. Hence this appeal before this Court.

Mr. J.K. Yogi, learned counsel for the appellants, has vehemently argued that the learned trial court was under a mis-impression that the learned advocate was representing all the defendants when in fact he was not representing the present appellants. However, when it was pointed out by this Court that appellant No.2 Hotel Sariska Palace situated at Alwar, has its registered office in New Delhi which is shown as proforma respondent No.3, he agreed to the same. Moreover, proforma respondent No.3 was also representing appellant No.1, namely

Rathore Hotel Tour Pvt. Ltd. He had no answer. Admittedly, notices were received and "Vakalatnamas" were signed by proforma respondent No. 3.

On the other hand, Mr. Ajeet Bhandari, learned counsel for the respondents, has thoroughly supported the impugned order.

We have heard the learned counsels for the parties and perused the material on record.

A bare perusal of the impugned Order clearly reveals that the notices were served on the defendants through a Registered A.D. The said Registered A.D. is available on record. Since, despite the service of that notice on the defendants-appellants, they did not appear before the learned trial court. Thus, vide order dated 22.1.02, the learned trial court directed that an ex-parte proceedings shall commence against them. On 20.4.04 an application was filed by all the defendants-including the present appellants-for setting aside the ex-parte proceedings. After hearing both the parties the learned Court set aside the ex-parte order and imposed a cost of Rs. 1,000/-. Subsequently, a written statement was filed on behalf of the defendants on 7.9.02. However, during the course of the proceedings on 21.11.02 no one appeared. Therefore, an ex-parte order was again passed. Again an application for setting aside the

ex-parte proceedings was submitted. Vide order dated 25.1.03, the ex-parte proceeding was again set aside. On 25.1.03, the statement of PW-1 Govind Singh was examined and cross-examined. Subsequently, PW-2 and 3 were equally cross-examined by the appellants-defendants. Subsequently, the case was fixed for the evidence of the defendants on 2.8.03 and on 2.8.03 DW.1 N.S. Rathore submitted his affidavit. 27.11.03 was fixed as the date for examination of the N.S. Rathore D.W.1. However, on that date Mr. Rathore did not appear. Therefore, an order was passed that his affidavit shall not be admitted as evidence. According to the learned trial court both the parties were heard on 9.1.04 which is also apparent from the order dated 9.1.04 which has been submitted as Annex-3 alongwith this appeal. It is only after hearing both the parties that a judgment and decree dated 9.1.04 was passed. Therefore, the learned trial court has rightly concluded that no ex-parte judgment and decree was passed. It seems that the appellants are dragging this case in order to escape their liability of paying the amount due to respondent No.1.

In the result, we see no force in this appeal. It is, hereby dismissed.

(R.S. CHAUHAN) J.

MRG.